UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/025,345	02/18/98	HINSHAW J	PMS-244198

PM82/0913

CUSHMAN DARBY & CUSHMAN
1100 NEW YORK AVENUE, N. W.
NINTH FLOOR
WASHINGTON, DC 20005-3918

EXAMINER	
MILLER,E	
ART UNIT	**PAPER NUMBER**
3641	17

DATE MAILED: 09/13/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary	Application N .	Applicant(s)	
	09/025,345	HINSHAW ET AL.	
	Examin r	Art Unit	
	Edward A. Miller	3641	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Peri d f r Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

1)☐ Responsive to communication(s) filed on _____ .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,40,78 and 81-117* is/are pending in the application.

4a) Of the above claim(s) *40,78,81,82 and 92-113* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,83-91 and 114-117* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☒ Claims *1,40,78 and 81-117* are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a)☐ All b)☐ Some * c)☐ None of the CERTIFIED copies of the priority documents have been:

1.☐ received.

2.☐ received in Application No. (Series Code / Serial Number) _____ .

3.☐ received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

Attachment(s)

15)☒ Notice of References Cited (PTO-892)
16)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
17)☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
18)☐ Interview Summary (PTO-413) Paper No(s). _____ .
19)☐ Notice of Informal Patent Application (PTO-152)
20)☐ Other: .

1. Applicants' previous response was the election of a single species of cobalt ammine nitrate and calcium stearate. See MPEP 806.04(e), where claims are not species. This requirement remains final. Claims, as understood, which read on the elected species are claims 1, 83-91, and 114-117. The other claims are withdrawn from consideration as drawn to a nonelected species or invention.

Applicants' remarks are not persuasive of error. In the first instance, applicant did not list claims 92, e.g., as readable on the elected species in the response filed December 29, 1999. Secondly, claim 97 which was listed is clearly erroneous. Claim 97 recites added oxidizer. This is a different species or combination than as elected. Note MPEP 806.04(c), where a subcombination (cobalt ammine nitrate oxidizer with stearate) is not generic to a combination, containing the subcombination and additional ingredients, co-oxidizer, e.g. Alternately, These are separate single species. A single species is a species, not a subgenus. If applicant intended to elect a subgenus instead of a single species as required, this would be contrary to 37 C.F.R. 1.135 (b), e.g.

2. The text of those sections of Title 35, U. S. Code, not included herein can be found in a prior Office action.

3. Claim 1 is rejected under 35 U.S.C. 102 (b) as anticipated by Cook et al., Rausch, and Hommel et al.

These references teach compositions of ammine nitrate oxidizers, and thus anticipates the claims as best understood are anticipated. Applicants' arguments are without merit. It is hornbook law that the intended use of a composition, here, a known compound, will not define over the same compound for a different use. It is clear that a new intended use does not confer patentability on an otherwise old composition. See, for example, *In re Thuau*, 135 F.2d 344, 1943 C.D. 390, *In re Pearson*, 181 USPQ 641, and *In re Touminen*, 213 USPQ 89. Further, the argument as to Rausch fails additionally, as the specification specifically teaches the addition of metal fuel additives disclosed in the parent patent at col. 6, lines 48-52. Further, burning too hot relates to a specific apparatus, which is not within the purview of this claim. Any number of apparatuses have cooling means to cool hot gases, as is notoriously well known in the art, e.g.

4. Claims 1, 83-91, and 114-117 are rejected under 35 U.S.C. 103 as being unpatentable over Cook et al. and Hommel et al., in view of Christmann et al.

Cook et al. and Hommel et al. teach compositions of metal ammine nitrates for use in explosives. Christmann et al. teach that such nitrate explosives conventionally include water repelling agents of salts of fatty acids, col. 2, lines 66-68, as well as lubricants such as graphite or molybdenum disulfide, col. 3, lines 13-15. Use of calcium stearate for the water repelling agent, or the lubricants as taught, in the primary references would have been obvious. The specific cobalt ammine nitrates are notoriously well known, if not specifically taught, and substitution thereof would have been obvious for the similar ammine complexes. It is well settled that optimizing a result effective variable is well within the expected ability of a person of ordinarily skill in the subject art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980), *In re Aller*, 220 F.2d 454, 105 USPQ 233 (CCPA 1955).

5. The prior indefiniteness rejection is withdrawn in that applicants have made it clear that no particular dimensions, form, or other limitation is implied by the language in question, only that the compound, e.g., is made in some manner, which is always the case as substantially everything is prepared from something else.

6. Claims 1, 83-91, 114-117 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the prior invention as set forth in claims 31, 36, 49 and 66, e.g., of U.S. Patent No. 5,725,699. Although the conflicting claims are not identical, they are not patentably distinct from each other because of clear overlap.

The obviousness-type double patenting rejection is a judicially established doctrine based upon public policy and is primarily intended to prevent the improper extension of patent rights by prohibiting claims in a second patent which are not patentably distinct from claims in a first patent. *In re Vogel*, 164 USPQ 619 (CCPA 1970), *In re Kaplan*, 229 USPQ 678 (CAFC 1986). A timely filed terminal disclaimer in compliance with 37 C.F.R. 1.321(b) would overcome an actual or provisional rejection on this ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 C.F.R. 1.78(d).

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Schneiter et al. teaches that air bag compositions in fact use rocket technology at col. 4, lines 1-2, and Diebold teaches a specific type of apparatus with built in cooling whereby high energy propellant may be used for gas generator applications in the Abstract and in col. 1, lines 25-41.

8. Applicant's amendment necessitated the new grounds of rejection. Accordingly, **THIS ACTION IS MADE FINAL.** See MPEP 706.07(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

9. Any inquiry concerning either this or an earlier communication from the Examiner should be directed to Examiner Edward A. Miller at (703) 306-4163.

Examiner Miller may normally be reached daily, except alternate Fridays, from 8:30 AM to 6 PM.

If attempts to reach Examiner Miller by telephone are unsuccessful, his supervisor, Mr. Jordan, can be reached at (703) 306-4159. The Group fax number is (703) 305-7687.

If there is no answer, or for any inquiry of a general nature or relating to the application status, please call the Group receptionist at (703) 308-1113.

Miller/em
September 11, 2000

EDWARD A. MILLER
PRIMARY EXAMINER